

679C.106 Exceptions to privilege.

1. No privilege exists under section 679C.104 for a mediation communication that involves any of the following:

- a. An agreement evidenced by a record signed by all mediation parties to the agreement.
- b. A communication that is available to the public under chapter 22 or made during a session of a mediation which is open, or is required by law to be open, to the public.
- c. A threat or statement of a plan to inflict bodily injury or commit a crime of violence.
- d. A plan to commit or attempt to commit a crime, the commission of a crime, or activity to conceal an ongoing crime or ongoing criminal activity.
- e. A communication that is sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediator.
- f. Except as otherwise provided in subsection 3, a communication that is sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediation party, nonparty participant, or representative of a mediation party based on conduct occurring during a mediation.
- g. A communication that is sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation in a proceeding in which a child or adult protective services agency is a party, unless the child or adult protection case is referred by a court to mediation and a public agency participates.

2. There is no privilege under section 679C.104 if a court, administrative agency, or arbitrator finds, after a hearing in camera, that the party seeking discovery or the proponent of the evidence has shown that the evidence is not otherwise available, that there is a need for the evidence that substantially outweighs the interest in protecting confidentiality, and that the mediation communication is sought or offered in any of the following situations:

- a. A court proceeding involving a felony or misdemeanor.
 - b. Except as otherwise provided in subsection 3, a proceeding to prove a claim to rescind or reform a contract or a defense to avoid liability on a contract arising out of the mediation.
3. A mediator shall not be compelled to provide evidence of a mediation communication referred to in subsection 1, paragraph “f”, or subsection 2, paragraph “b”.

4. If a mediation communication is not privileged under subsection 1 or 2, only the portion of the communication necessary for the application of the exception from nondisclosure may be admitted. Admission of evidence under subsection 1 or 2 does not render the evidence, or any other mediation communication, discoverable or admissible for any other purpose.

2005 Acts, ch 68, §11

Referred to in §679C.103, 679C.104, 679C.107